

CHAPTER 35
WAGE COLLECTION PAYMENT

[Prior to 9/24/86, Labor, Bureau of [530]]

[Prior to 10/21/98, see 347—Ch 35]

875—35.1(91A) Definitions.

“*Claimant*” means an employee who has submitted a wage claim form to the labor commissioner.

“*Commissioner*” means the labor commissioner of the division of labor services or a designee.

“*Division*” means the division of labor services of the department of workforce development.

“*Employee*” is defined in Iowa Code chapter 91A, and does not include an independent contractor.

“*Enforceable*” means eligible for the enforcement actions of the labor commissioner.

“*Legal action*” means filing in a court of competent jurisdiction and subsequent activity pursuant to that filing.

“*Wage claim form*” means a document of the division that requests information pertinent to a wage claim that an employee submits to the division to commence investigation of the wage claim.

875—35.2(91A) Right of private action. Nothing in this chapter, including a determination that a claim is unenforceable, prejudices the right of an employee to pursue a wage claim by private action with or without the services of an attorney. If a claimant wishes to pursue a private action after assigning a wage claim to the commissioner, the claimant shall so notify the division in writing prior to commencing that private action.

875—35.3(91A) Filing a claim.

35.3(1) *Wage claim form.* A wage claim form shall be available upon request. An aggrieved employee shall supply such information as required by the commissioner to commence the investigation of a claim. The claimant shall certify by signature that such information is true to the best of the claimant’s knowledge and belief. A claim for wages shall be made by submitting a complete wage claim form to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

35.3(2) *Assignment of claim.* By submitting a wage claim form to the division, a claimant assigns the claim to the commissioner contingent on the commissioner’s determination that the claim is enforceable. A claimant may terminate the assignment by so notifying the division in writing. The commissioner may terminate the assignment upon a determination that the claim is not enforceable.

35.3(3) *Denial of claim.* The commissioner may deny claims within 14 days of receipt. Reasons for denying a claim without further investigation include, but are not limited to, the following:

a. The claim is received by the division more than one year after the date the wages became due and payable.

b. The claim must be heard in another forum or jurisdiction.

c. The claimant has begun a legal proceeding on the claim or has legal representation to pursue the claim.

d. The claim has been discharged in bankruptcy.

e. The claimant is not a resident of Iowa when submitting the claim to the division.

875—35.4(91A) Investigation.

35.4(1) *Receipt of wage claim form.* Upon receipt by the division of a completed and signed wage claim form from an aggrieved employee, the commissioner shall review the claim for wages and the allegations therein. The commissioner's review is not to be construed as a contested case as defined in Iowa Code chapter 17A.

35.4(2) *Employer notification of wage claim.* The commissioner shall notify the employer in writing of the allegations of the claimant and shall request a response from the employer within 14 days from the date of the letter. This period may be extended by the commissioner for good cause.

35.4(3) *Failure of employer to respond.* If the employer fails to answer the commissioner's request for response within the 14-day period, or as extended by the commissioner, the commissioner may determine the claim to be enforceable.

35.4(4) *Additional information from claimant.* If the employer answers the commissioner's request for response within the established time, the commissioner shall notify the claimant of the employer's response and afford the claimant an opportunity to present additional information in support of the claim for wages. The claimant shall submit the requested additional information within 14 days from the date of the letter. This period may be extended by the commissioner for good cause.

35.4(5) *Additional information from employer.* Upon receipt of the requested additional information from the employee, the commissioner may determine additional information is required from the employer.

35.4(6) *Determination of enforceability.* Upon receipt of sufficient information, the commissioner may determine the claim for wages to be enforceable and the commissioner shall notify the claimant and the employer of that determination.

35.4(7) *Determination of unenforceability.* The commissioner may, at any time, determine a claim to be unenforceable. Should the commissioner determine the claim is unenforceable, the commissioner shall so notify the claimant. Reasons for the commissioner to determine that a claim is unenforceable include, but are not limited to, the following:

- a. Doubtful legal validity or complexity of the claim.
- b. Doubtful ability to collect money from the employer.
- c. The claim may require extensive discovery or involve protracted proceedings.
- d. The potential value of the claim is such that the cost of the claimant's obtaining legal counsel for a private action would not be prohibitive.
- e. The claimant is not responsive to the reasonable requests of the division, including, but not limited to, requests to provide information and to participate in a legal action.
- f. The claimant fails to notify the division of an address change.
- g. The inequity of the claim in the particular situation.
- h. Another jurisdiction or forum is preferable for the claim.
- i. A substantial probability that the claimant was not an employee.
- j. The claim has been included in a bankruptcy estate.

35.4(8) *Settlement of claim.* The commissioner may settle a claim at any time with the consent of the claimant. Such consent may be included on the wage claim form.

875—35.5(91A) Legal action on wage claims.

35.5(1) *Settlement opportunity.* The commissioner shall, in writing, afford the employer an opportunity to tender settlement 14 days prior to commencing a legal action.

35.5(2) *Standard of conduct.* Upon commencing a legal action, the commissioner shall be bound by the standard of conduct required by the code of professional responsibility for lawyers.

35.5(3) *Counterclaims.* The commissioner shall not represent claimants on counterclaims or other legal actions brought by employers against claimants.

35.5(4) *Relief requested.* The commissioner may request liquidated damages, interest, attorneys' fees, and court costs in addition to wages due.

35.5(5) *Claimant participation.* The commissioner may require the claimant to attend hearings and otherwise assist in the legal action as a condition of the commissioner's enforcing the claim.

These rules are intended to implement Iowa Code chapter 91A and section 84A.2.

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